BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: STUDENT, v. LOS ANGELES COUNTY OFFICE OF EDUCATION,	OAH CASE NO. 2010040050
STUDENT, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, LOS ANGELES UNIFIED SCHOOL DISTRICT & CALIFORNIA DEPARTMENT OF EDUCATION.	OAH CASE NO. 2011030120

DECISION

Administrative Law Judge (ALJ) Richard T. Breen, Office of Administrative Hearings (OAH), State of California, heard this consolidated matter in Downey, California, on May 24, 2010, and June 1, 2011. Evidence was also taken before ALJ Stella Owens-Murrell (ALJ Owens-Murrell) in Van Nuys, California, on April 21, 2011.

Attorney Tania L. Whiteleather represented Student at all times. Student was not present at the hearing. On May 24, 2010, Attorney Karen E. Gilyard represented the Los Angeles County Office of Education (LACOE), accompanied by LACOE representative Dr. Gary Levin. Attorney Courtney Brady represented LACOE on other dates, accompanied by LACOE representative Dr. Gary Levin on April 21, 2011, and James Albanese on June 1, 2011. Attorney Ernest Bell represented the Los Angeles Unified School District (LAUSD) on April 21, 2011, and June 1, 2011, accompanied by LAUSD representative Sandra Naba. The California Department of Education (CDE) was represented by Attorney Edmundo Aguilar on April 21, 2011, and June 1, 2011, with Attorney Ava Yajima on June 1, 2011.

PROCEDURAL HISTORY

Student's Request for a Due Process Hearing in OAH case number 2010040050 (First Case) was filed on March 30, 2010. Prior to hearing, OAH denied LACOE's motion to join LAUSD as a party. No continuances were granted prior to hearing. A hearing was held before the undersigned ALJ on May 24, 2010, and a timely decision was issued on June 15, 2010.

On June 24, 2010, LACOE filed an action before the United States District Court for the Central District of California (District Court), entitled *Los Angeles County Office of Education v. [Student]*, case number CV 10-4702-CAS (RCx) (the District Court action). In the District Court action, LACOE sought to overturn the June 15, 2010 decision in the First Case on the ground that the undersigned ALJ had erred by not granting its motion to join LAUSD as a party.

On February 25, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011030120 (Second Case), naming LACOE, LAUSD, and the CDE as respondents.

On April 21, 2011, ALJ Owens-Murrell conducted a hearing in the Second Case. At hearing, a continuance was granted to May 9, 2011, to permit the parties to file written closing arguments.

On April 22, 2011, the District Court issued an order remanding the First Case with instructions to: (1) consolidate the First Case and the Second Case; (2) apportion responsibility, if any, for implementing and funding Student's residential treatment (RTC) placement among the respondents; and (3) issue a new decision.

On May 3, 2011, Student filed a stipulated motion to delay or continue the briefing deadline in the Second Case, and to convene a status conference to address the implications of the order in the District Court action and its affect on the pending action in the Second Case. On May 4, 2011, ALJ Owens-Murrell ordered that the First Case and Second Case be consolidated for hearing before the undersigned ALJ, ordered the matters continued, and set a status conference on May 12, 2011.

The following was ordered at the May 12, 2011 status conference: 1) The 45-day timeline for issuance of a decision under the IDEA began running on April 22, 2011, the date the District Court remanded the First Case, and stopped running on May 4, 2011, the date the parties' request for a continuance and status conference was granted; 2) Because the District Court issued its order subsequent to the April 21, 2011 hearing in the Second Case before ALJ Owens-Murrell, the parties stipulated that the undersigned ALJ could rely on the

stipulated evidence presented before ALJ Owens-Murrell[1]; and 3) Additional evidence would be taken at a hearing on June 1, 2011.

At the hearing on June 1, 2011, additional testimony was received from Student's mother. Student's counsel was ordered to file with OAH by June 10, 2011, any disposition order from the Superior Court of California, County of Los Angeles, Juvenile Court (Juvenile Court) that issued after the initial hearing date in the First Case. The matter was continued to June 20, 2011, to permit the parties to file written closing arguments.

On June 9, 2011, Student filed with OAH a copy of a Juvenile Court minute order dated January 14, 2011. All parties timely filed closing briefs by June 20, 2011.

The January 14, 2011 Juvenile Court order that had been filed by Student's counsel was incomplete, and not in compliance with the order at the June 1, 2011 hearing, because on its face it incorporated the terms of a July 18, 2010 order that had not been provided. Accordingly, Student's counsel was ordered to file "any Juvenile Court order(s) regarding Student entered after May 20, 2010 and before June 1, 2011 (the date of the consolidated hearing on remand)" by July 12, 2011. Student's counsel timely complied and served the documents on all parties. Upon receipt of the additional Juvenile Court orders on July 12, 2011, the record was closed.

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ISSUES

Issue in First Case

1. Whether LACOE was the local educational agency (LEA) responsible for implementing the RTC recommendation made by the Los Angeles County Department of Mental Health (DMH) at the February 24, 2010 IEP prior to Student being discharged from Los Angeles County Juvenile Hall (Juvenile Hall).[2]

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[1] In addition to reviewing the documentary evidence and written stipulations, the undersigned ALJ listened to the recording of the April 21, 2011 hearing prior to writing this decision.

[2] All other issues in the First Case were dismissed or withdrawn prior to hearing. Specifically, at the time of the original prehearing conference, the issue was identified as Student's Issue Two from the complaint: "Whether LACOE denied Student a free appropriate public education (FAPE) from September 25, 2009, through the date of filing [in OAH case number 2010040050], by failing to implement a recommendation to place her in a residential treatment center." The prehearing conference order noted that the above issue encompassed Student's Issue One, which was phrased in the complaint as, "Whether LACOE is the [local educational agency] LEA responsible for providing [Student] with a FAPE." Based on the facts alleged in support of Issue One, the issue had been interpreted by the ALJ as follows: Whether LACOE was the LEA responsible for implementing the *(continued)*

Issue in Second Case

2. Whether LAUSD, LACOE, or the CDE was the LEA responsible for providing a free appropriate public education (FAPE) to Student as of the date Student was discharged from Juvenile Hall and entered an agreed-upon, out-of-state RTC in Texas in July 2010.

FACTUAL FINDINGS

1. In July of 2004, when Student was 13 years old, she lived with her mother at an address in the City of Los Angeles that was served by LAUSD. She was eligible for special education under the eligibility category of specific learning disability and attended school at LAUSD. LAUSD developed an individualized education program (IEP) for Student that provided for education in an LAUSD special day class (SDC), a behavior support plan, annual goals, and a transition plan.

2. In 2004, Student ran away from home. Student lived on the streets for approximately five years. Although the Department of Children and Family Services was involved in trying to get Student to return home, Mother's parental rights were never terminated while Student was a minor.

3. In approximately 2006, Student's Mother moved from the address where Student lived while enrolled in LAUSD, to an address in the city of South Gate that was served by LAUSD. Mother had other minor children who lived with her at the new address. Mother had enrolled all of her other children in LAUSD after showing LAUSD proof of residence at the new address.

4. Student was not registered as a Student with LAUSD at any time after she ran away from home.

5. Prior to her 18th birthday, Student was detained at Juvenile Hall pursuant to a wardship petition filed on May 15, 2009. LACOE operated the Central Juvenile Hall School (Juvenile Hall School) and developed IEPs for special education students enrolled there. While detained there, Student attended Juvenile Hall School and was eligible for special education as a student with a learning disability.

6. Student turned 18 years old in July of 2009, while detained in Juvenile Hall.

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residential treatment center recommendation made by the Los Angeles County Department of Mental Health at the February 24, 2010 IEP. On the first day of hearing on May 24, 2010, Student withdrew Issue Two, and stated that she wished to proceed on Issue One only.

7. At an IEP team meeting on September 25, 2009, Student was referred for a mental health assessment to DMH pursuant to AB 3632. The IEP reflected that Student had not been in school for approximately five years prior to the IEP, Student's parent did not attend the IEP meeting, and Student's last IEP was developed by LAUSD in 2004.

8. DMH assessed Student in December of 2009. DMH found that Student was also eligible for special education as a student with an emotional disturbance. In a report dated January 8, 2010, DMH recommended that Student be placed in a RTC.

9. At an IEP team meeting on February 24, 2010, Student's IEP was changed to add emotional disturbance as a basis for Student's eligibility for special education. DMH repeated the recommendation in its January 8, 2010 report that Student required placement in a RTC. The IEP expressly stated, "LACOE agrees that the student requires a residential [treatment center] directly upon her release from Juvenile Hall."

10. At subsequent IEP team meetings on March 25, 2010, May 5, 2010, and May 7, 2010, LACOE took the position that it did not have to do anything to provide the RTC placement to Student because, consistent with its statement in the February 24, 2010 IEP, the RTC placement would only occur upon her release from Juvenile Hall. LACOE's offer of placement and services at these IEP team meetings was continued placement in an SDC at Central Juvenile Hall School with counseling.

11. As of the May 7, 2010 IEP team meeting, DMH confirmed that Student had been accepted for admission to Devereux, a RTC in Texas with a program for young women over the age of 18. As a condition of enrolling Student, Devereux required written confirmation of the "agency/district" that was "committed to funding for the duration of the placement" and confirmation that Student had medical insurance.

12. On May 20, 2010, the Juvenile Court ordered, in relevant part, that: "The Court will permit the implementation of the residential placement recommended for [Student] in the February 24, 2010 IEP, upon determination of the agency responsible for the educational services to the minor . . . ." Further proceedings in the Juvenile Court were continued on the Juvenile Court's motion to June 24, 2010.

13. Student filed a request for a due process hearing on March 30, 2010, in the First Case. A due process hearing was held on May 24, 2010. As of that date, LACOE had not taken any steps to implement the recommendation for a RTC placement. Following the hearing, OAH issued a decision on June 15, 2010, that ordered: "LACOE is responsible for implementing the February 24, 2010 IEP team recommendation to place Student in a residential treatment center. LACOE's responsibility includes coordinating efforts between agencies, signing any necessary contracts, providing any necessary funding, and providing transportation for Student."

14. On June 24, 2010, the Juvenile Court ordered that LACOE be joined as a party to the delinquency proceeding. LACOE was ordered to contact Devereux within 24 hours to arrange for Student's transportation there.

15. On July 9, 2010, the Juvenile Court ordered Student's continued detainment at Juvenile Hall pending her release to the "LACO[E] placement." The Juvenile Court ordered LACOE to provide funding and transportation and that Student could be released to the custody of West Shield Adolescent Services (West Shield) for transportation.

16. On July 9, 2010, LACOE paid $30,095.00 under a contract with Devereux Texas – League City, for the educational services portion of an RTC placement there. The contract was for the period of July 1, 2010, through June 30, 2011. No evidence was presented about the non-educational costs of Student's attendance at Devereux.

17. LACOE paid $3,850.00 for Student's transportation from Juvenile Hall to Devereux under a contract with West Shield. The transportation contract was initially approved on July 8, 2010, and called for transportation of Student from Juvenile Hall to Devereux in League City, Texas, between July 9, 2010, and July 30, 2011.

18. Student left LACOE's Juvenile Hall School on July 15, 2010, and was transported to Devereux in League City, Texas.

19. On July 16, 2010, the Juvenile Court entered a disposition order. The disposition order placed Student on probation for a period of 12 to 36 months. Student was ordered released to the Devereux placement. The order noted that Student was already at Devereux as of the date of the order.

20. On January 14, 2011, the Juvenile Court issued an order that retained the terms of the July 16, 2011 disposition order, but released Student to the custody of her parent.

21. In a letter dated January 24, 2011, LACOE requested that LAUSD assume responsibility for providing Student a FAPE. LACOE asserted to LAUSD that LAUSD owed a duty to provide a FAPE because Student's mother lived at an address in South Gate, an area that was served by LAUSD. Because Student's mother had moved in 2006, Mother's address in South Gate was different than the address listed on Student's last LAUSD IEP from July of 2004.

22. In a letter dated February 7, 2011, Student, through her attorney, asked LAUSD to assume responsibility for her education.

23. On February 25, 2011, Student filed her request for due process hearing in the Second Case, naming LACOE, LAUSD, and the CDE as respondents.

24. LACOE sent a letter to LAUSD on March 18, 2011 advising that as Student's new LEA, LAUSD needed to coordinate Student's state testing with Devereux.

25. On April 21, 2011, the hearing in the Second Case proceeded before ALJ Owens-Murrell.

26. On April 22, 2011, the District Court reversed and remanded the First Case, with instructions to consolidate it with the Second Case.

27. Student was enrolled at Devereux from July 15, 2010, through the last date of hearing on June 1, 2011.

LEGAL CONCLUSIONS

Application of United States District Court Order

1. This section will address how the ALJ has interpreted the District Court's order for purposes of this decision. As discussed in the Procedural History, on April 22, 2011, the United States District Court issued an order on LACOE's motion for summary judgment in case number CV 10-4702-CAS. After concluding that the ALJ erred by not granting LACOE's motion to join LAUSD as a party prior to the May 24, 2010 hearing and decision in the First Case, the Court remanded the matter and issued the following order, in relevant part:

> The Court hereby REMANDS the case to the ALJ with instructions to: (1) consolidate the instant action [First Case] with [Student's] February 25, 2011 due process complaint; (2) apportion responsibility, if any, for implementing and funding [Student's] RTC placement among LACOE, LAUSD and CDE consistent with this order and the IDEA; and (3) issue a new decision.

2. First, the ALJ was not ordered to "join" LAUSD as a party to the First Case. Despite finding that the ALJ erred by denying LACOE's motion to join LAUSD as a party in the First Case, the District Court did not order compulsory joinder. Instead, the District Court ordered the ALJ to "*consolidate* the instant action with [Student's] February 25, 2011 due process complaint [emphasis added]." Presumably, the District Court used the term "consolidation" as that term is used in the Federal Rules of Civil Procedure. Rule 42 of the Federal Rules of Civil Procedure states: "If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Consolidation on its face is permissive and, as such, does not result in the compulsory joinder of parties. Indeed, "an order of consolidation does not have the effect of making the parties to one suit parties in another suit, and the court has no power to do so". (*National Nut Co. of Cal. v. Susu Nut Co.* (N.D. Ill. 1945) 61 F.Supp. 86, 88; see also *In re Equity Funding Corp. of America Securities Litigation* (C.D. Cal. 1976) 416 F.Supp. 161, 176 [acknowledging the principle that consolidation does not make parties to one suit parties in another].) Had the United States District Court actually intended to order the ALJ to

"join" LAUSD in the First Case, it would have stated so by using language like that found in Code of Civil Procedure section 389 ("[i]f he has not been so joined, the court *shall* order that he be made a party" [emphasis added]) or Rule 19(a)(2) of the Federal Rules of Civil Procedure ("[i]f a person has not been joined as required, the court *must* order that the person be made a party" [emphasis added]). The ALJ assumes that the District Court realized that, despite its legal conclusion regarding joinder, that consolidation was a more practical option because Students' Second Case, naming LAUSD as a respondent, was on file and already underway before OAH at the time of the order. Accordingly, this decision will treat the First Case and Second Case as having been consolidated and will not treat LAUSD as having been joined as a party to the First Case.

3. The United States District Court's second instruction, to "apportion responsibility" among the respondents "consistent with this order and the IDEA," will be interpreted as requiring the ALJ to determine what duty each respondent agency owed to Student based on the allegations in each case, not what duty each respondent agency might owe the other respondent agencies. First, as discussed above, the ALJ interprets "consistent with this order" literally as meaning consolidation, not joinder of LAUSD into the First Case. The First Case and Second Case are consolidated actions in which Student sought a ruling as to the duty that each of the respondent agencies had to provide her a FAPE during certain time periods. No issue was raised by Student that would address the duties of each agency to each other.

4. As to being consistent with the IDEA, the IDEA limits the issues at hearing as follows: "The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [due process complaint]." (20 U.S.C. § 1415(f)(3)(B); accord, Ed. Code, § 56502, subd. (i).) Further, under California IDEA hearing procedures, Government Code section 7586, subdivision (d), precludes LEAs from filing IDEA due process hearing procedures against each other. Although the United States District Court concluded based on a "see"[3] citation to Code of Civil Procedure section 389, that Government Code section 7586, subdivision (d), did not preclude joinder of an LEA not named as a party into Student's case, the United States District Court order did not question the validity of this Government Code section to bar agency versus agency disputes. Here, because Student's allegations in the consolidated First Case and Second Case are limited to each agency's responsibility to her, and because statutory authority precludes the adjudication of issues not raised in the due process complaint, and precludes LEAs from filing IDEA disputes against each other, this decision will not determine the obligations of the respondent agencies to each other. This result is consistent with the United States District Court's express consolidation order and the IDEA.

[3] "See" is used when the proposition is not directly stated from the cited authority. (The Bluebook: A Uniform System of Citation (18th ed. 2005) § 1.2, p.46; Cal. Style Manual (4th ed. 2000) § 1:4.)

5. Finally, because the United States District Court did not ultimately order compulsory joinder of LAUSD as a "party" into the First Case, but chose to order consolidation of the issues in the First Case and Second Case, it is not necessary for purposes of issuing a decision on remand to revisit the District Court's reasoning regarding the applicability of Code of Civil Procedure section 389 to IDEA administrative hearings. However, because the ALJ respectfully disagrees with the District Court's reasoning, the ALJ has set forth his reasoning in an endnote to this decision in order to preserve it for the record.[i] The remaining legal conclusions below address the issues on remand.

Contentions

6. Student contends that because Student was incarcerated in Juvenile Hall as of May 24, 2010 (the first hearing date in the First Case), LACOE was solely responsible for providing Student with a FAPE during her incarceration, which included taking any necessary steps to enroll her in an RTC as contemplated by the DMH recommendation. Student further contends that upon Student's release from juvenile hall, which only occurred after an order was issued in OAH Case Number 2010040050, LAUSD was responsible for the educational portion of Student's RTC placement under Education Code section 56401, subdivision (a), because at all relevant times, Student's mother lived in an area served by LAUSD. Student further contends that Student should not be a party to financial disputes between educational agencies such as CDE, LACOE, and LAUSD, once it is established who owed Student a duty to provide a FAPE during particular time periods.

7. CDE contends that it was not responsible for providing a FAPE to Student (i.e., developing an appropriate IEP and implementing the placement and services) at any relevant time. Specifically, CDE contends that under the IDEA, the individual states have flexibility to determine how to supervise and deliver the services mandated by the IDEA. Thus, CDE contends that under California law it is a state education agency (SEA) within the meaning of the IDEA that is charged with general supervision of special education programs. In contrast, CDE contends it is not a local education agency (LEA) under IDEA that would have a duty to provide services to individual students. Further, because the residency of a particular student or parent determines the responsible LEA under California law, at all times the responsible LEA was either LAUSD, when Student was not in Juvenile Hall and Mother lived within LAUSD boundaries, or LACOE, when Student was in Juvenile Hall.

8. In case number 2010040050, LACOE contended that it did not have a duty to do anything to implement the RTC recommendation because: 1) they had been providing Student with education in a SDC at all relevant times; 2) no specific RTC was recommended on February 24, 2010, and as of the time of the first hearing, it was uncertain whether a bed was available at Devereux; and 3) LACOE did not have to implement the RTC recommendation because its obligation to Student ceased immediately upon her release from Juvenile Hall. In case number 2011030120, LACOE contends that LAUSD is the LEA responsible for Student's education upon her release from Juvenile Hall under Education Code section 56041, subdivision (a), and that accordingly, it does not have a present duty to implement a placement outside of Juvenile Hall. LACOE contends that the above

interpretation of Education Code section 56041 is consistent with other provisions of California law that consider Juvenile Hall residency a temporary court placement and not a permanent change of residence.

9. LAUSD contends that during the time Student was in Juvenile Hall, LACOE was responsible for providing Student a FAPE based on her involuntary residency there. LAUSD further contends that the language of Education Code section 56041, subdivision (a), which identifies a non-conserved student's last district of residence before reaching the age of majority as the responsible LEA, is superseded by another statute. Specifically, LAUSD contends that the language of Education Code section 56401.5, which clarifies that all rights transfer to a non-conserved Student at age 18, should be read as mandating that a non-conserved student's LEA is based on the student's residency, not the parent's.

10. LAUSD further contends that even if it is wrong about its interpretation of the Education Code, Student failed to produce sufficient evidence of her enrollment in LAUSD, and/or Mother's residence within LAUSD during the relevant time period. Specifically, LAUSD contends that it has no responsibility because no evidence was offered that Student had formally enrolled in many years and formal enrollment is required prior to triggering an LEA's duty to provide a FAPE. Further, LAUSD faults LACOE for not contacting it until seven months after the initial decision in case number 2010040050, and even then, providing incorrect information about Mother's residence address. LAUSD further contends that LACOE should have, but did not, pursue its interagency dispute resolution process under California Code of Regulations, title 2, section 60060. Finally, LAUSD contends that Student should not be considered a prevailing party because Student could have, but did not, bring all possible denial of FAPE claims as part of case number 2011030120.

Applicable Law

11. As the petitioning party, Student had the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

12. The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education (FAPE)," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A FAPE means special education and related services that are available to the student at no cost, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

13. Under the IDEA, state education agencies are responsible for "general supervision," i.e., ensuring that: 1) IDEA requirements are met; 2) special education programs are supervised and meet the educational standards of the state education agency; and 3) the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.) are met as to homeless children. (20 U.S.C. § 1412(a)(11).) A state education agency may be responsible for the provision of special education if it fails to meet

its duty of ensuring that the requirements of the IDEA are met. (See *Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 953; *Kruelle v. New Castle County Sch. Dist.* (3d Cir. 1981) 642 F.2d 687, 696.) However, the "general supervision" responsibilities of a state agency do not limit the responsibility of other agencies in a state "to provide, or pay for some or all of the costs of a free appropriate public education for any child with a disability in the State." (20 U.S.C. § 1412(a)(11)(B).)

14. Special education due process hearing procedures extend to pupils who are wards or dependants of the court, to their parents or guardians, and to the public agencies involved in any decisions regarding pupils. (Ed. Code, § 56501, subd. (a).)

15. IDEA due process hearing requests brought by a pupil against a public agency properly include determinations of the public agency responsible for providing special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525*; J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

16. The IDEA allows states the flexibility to determine which agency provides the assessments or related services required by the IEP process. (See 20 U.S.C. § 1412(a)(12).) In California, at the time Student was detained in Juvenile Hall, county departments of mental health conducted mental health assessments for purposes of developing IEPs. (Gov. Code, §§ 7570; 7572, subds. (a) & (c), 7576, subd. (a).)[4] If mental health services are recommended by an assessor as a related service, "the recommendation of the person who conducted the assessment shall be the recommendation of the [IEP] team members who are attending on behalf of the local educational agency." (Gov. Code, § 7572, subd. (d)(1).)

17. When a residential placement is recommended by an IEP team, the LEA, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) [including county offices of education within the definition of local education agency], 60110, subd. (b)(2) [for residential placements, "The LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil."], & 60200, subd. (d).)

18. California law determines which LEA is responsible for the provision of a FAPE. In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in sections 48200 and 48204. (*Katz*

[4] In *California School Boards Association v. Brown* (2011) 192 Cal.App.4th 1507, the court found, following a review of California law on funding of IDEA-required mental health related services, that as of October 8, 2010, the former Governor had the authority to make changes by line item veto, which lead to changes in California's delivery of IDEA mental health services. Subsequently, on June 30, 2011, the Governor signed into law a budget bill (SB 87) and a trailer bill affecting educational funding (AB 114). Together they make substantial amendments to Chapter 26.5 of the Government Code going forward.

v. Los Gatos-Saratoga Joint Union High School Dist. (2004) 117 Cal.App.4th 47, 57 (interpreting §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Under section 48200, children between the ages of 6 and 18 must attend school in the district "in which the residency of either the parent or legal guardian is located." (Ed. Code, § 48200.) A county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) For individuals who are between the ages of 18 and 21, and who are not conserved, and who are not confined to juvenile hall, the "last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local education agency, as long as and until the parent or parents relocate to a new district of residence." (Ed. Code, § 56041, subd. (a).)

19. In implementing an RTC placement that was recommended by the IEP team, the LEA is responsible for: transportation to and from the mental health services specified in the IEP; transportation to and from the residential placement specified in the IEP; and "the special education instruction, non-mental health related services, and designated instruction and services agreed upon in the nonpublic, nonsectarian school services contract . . . . ." (Cal. Code of Regs., tit. 2, § 60200, subd. (d)(2) & (3).)[5] Under California law, the provision of the mental health services required to provide a child with a FAPE under the IDEA is the responsibility of the community mental health services agency in the child's county of origin, such as DMH. (See Gov. Code, § 7576, subd. (a); Cal. Code of Regs., tit. 2, § 60200, subds. (c) & (e).)

20. California law expressly prohibits state or local public agencies from requesting a due process hearing against another public agency. (Gov. Code, § 7586, subd. (d).) Instead, "[d]ue process hearing procedures apply to the resolution of disagreements between a parent and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil." (Cal. Code of Regs., tit. 2, § 60550, subd. (a); see also Cal. Code of Regs., tit. 2, §§ 60000 [regulations applicable to implementation of Government Code section 7570, et seq.] & 60100, subd. (p) [definition of "parent" includes any adult pupil for whom a guardian or conservator has not been appointed].)

21. Disputes between public agencies over the responsibility for providing services in an IEP that were ordered by a hearing officer in an IDEA due process hearing held under Education Code section 56505 are resolved by using the procedure set forth in Government Code section 7585. (Cal. Code of Regs., tit. 2, § 60600, subds. (a) & (b).)

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[5] California Code of Regulations, title 2, section 60200 incorporates by reference title 34, United States Code, part 300.13 and Education Code section 56221; however, neither of these provisions is applicable when read in context. Title 34 United States Code, part 300.13 is a definition of "elementary school" that makes no reference to transportation or mental health services. Education Code section 56221 does not exist.

Government Code section 7585 requires a public agency that disputes responsibility for the provision of services with another public agency to file a written notification with the Superintendent of Public Instruction. (Gov. Code, § 7585, subd. (a).) The public agency parties are then required to meet with the Superintendent, or his or her designee, within 15 days to try to resolve the issue. (Gov. Code, § 7585, subd. (b).) If the issue is not resolved to the satisfaction of the Superintendent, the issue is submitted in writing to the Director of OAH or his or her designee. The Director of OAH, or designee, reviews the issue and submits findings and a decision within 30 calendar days of receipt. (Gov. Code, § 7585, subd. (d).) The decision of the Director of OAH or designee is binding on the departments or agencies involved in the dispute. (Gov. Code, § 7585, subd. (d).) Pupils are entitled to receive the disputed services while the dispute is pending and the Superintendent must "ensure that funds are available for the provision of the service pending resolution of the issue . . . . ." (Gov. Code, § 7585, subd. (f); see also Cal. Code of Regs., tit. 2, § 60610 [containing provisions for continuation of services mandated in IEP while departments or local agencies dispute their responsibility to provide the services].) The existence of a dispute resolution procedure for public agency disagreements over funding does not prevent a student from filing a request for a due process hearing. (Gov. Code, § 7585, subd. (g).)

Analysis of LACOE's Duty to Student

22. Here, at all relevant times through Student's release from Juvenile Hall custody, LACOE was statutorily identified as the LEA responsible for providing Student with a FAPE. (Ed. Code, §§ 48645.1, 48645.2, 56150.) Further, under California law, despite its status as the LEA, LACOE was required to accept the recommendation of DMH for residential treatment center placement in order to provide a FAPE. (Gov. Code, § 7572, subd. (d)(1).) At the February 24, 2010 IEP team meeting, not only did DMH recommend the RTC placement, but Student's eligibility category was changed to add emotional disturbance as a basis for Student's eligibility, consistent with the placement recommendation. At subsequent IEP team meetings on March 25, 2010, May 5, 2010, and May 7, 2010, LACOE took the position that it did not have to do anything to provide the RTC placement to Student because ultimately, upon Student's release, a new LEA would be responsible for educating Student by application of Education Code section 56041, subdivision (a).

23. LACOE cites no authority in the IDEA, and the ALJ is aware of none, that supports LACOE's position during the spring of 2010 that it could delay implementation of the RTC placement recommendation until a future LEA was identified. Specifically, there is nothing in the IDEA that permits an LEA, like LACOE, to delay implementation of the provision of FAPE for any reason other than lack of parental permission. (See 20 U.S.C § 1414(a)(1)(D) [LEA relieved of duty to provide FAPE based on lack of parental consent]; Ed. Code, § 56346, subd. (d) [same].) To the contrary, as the LEA for Student, LACOE had a duty as of February 24, 2010 to implement the RTC placement. (See Ed. Code §§ 48645.2, 48646, and 56150 [together establishing LACOE's duty to provide a FAPE to students in juvenile hall]; Cal. Code Regs., tit. 2, §§ 60010, subd. (k), 60110, subd. (b)(2) & 60200,

subd. (d) [together establishing that LACOE is considered a local educational agency responsible for all non-mental-health educational services related to a RTC placement].) Specifically, where the Juvenile Court had indicated a willingness to release Student to a RTC as part of the disposition of the wardship petition, LACOE had a responsibility to coordinate efforts between agencies toward this end, including signing any necessary contracts, providing any necessary funding, and transporting Student.

24. Although LACOE believed in the spring of 2010 that the duty to implement Student's IEP team recommendation for residential placement would shift in the future, it had a present duty to implement the IEP, subject to any state law procedures to obtain reimbursement or establish the new LEA. Accordingly, prior to Student actually leaving Juvenile Hall, IDEA required LACOE to implement the DMH recommendation by signing contracts for the RTC placement and arranging transportation, even if LACOE was required to expend funds subject to later reimbursement.

25. Here, as of June 15, 2010, LACOE had been ordered by OAH to implement such services. On July 9, 2010, the Juvenile Court made LACOE a party to its proceedings, and ordered LACOE to fund transportation and Student's RTC tuition. The Juvenile Court also ordered that custody of Student could be transferred to West Shield. LACOE paid for Student to be transported to Devereux, and West Shield did so on July 15, 2010. Under these facts, LACOE had a duty to provide Student a FAPE up until the time Student was transferred out of Juvenile Hall and into the custody of West Shield. Under these facts, even though LACOE would not ultimately be responsible for the provision of FAPE going forward based on the Juvenile Court's order changing custody to West Shield and placement to Devereux, LACOE had a duty to expend the funds necessary to implement the provision of a FAPE to Student, subject to any rights LACOE had to obtain reimbursement from other agencies within California. However, despite having the right to use state administrative processes to obtain reimbursement from other agencies, at no time did LACOE exercise its right to obtain reimbursement from LAUSD under California Code of Regulations, title 3, section 60600, subdivisions (a) & (b).

26. On remand, there is also a separate basis for holding LACOE responsible for implementing the RTC placement prior to Student's release from Juvenile Hall. As noted above, OAH ordered LACOE to implement the placement on June 15, 2010. Subsequently, on June 24, 2010, the Juvenile Court, i.e., the Superior Court of the State of California, ordered that LACOE be joined as a party to the delinquency proceeding. On July 9, 2010, the Juvenile Court ordered LACOE to provide funding and transportation to the RTC. The Juvenile Court's July 9, 2010 order was not appealable to the United States District Court and was not addressed in any way by the United States District Court's April 22, 2011 remand order regarding the instant cases.

27. Under these circumstances, as of the hearing on remand, this decision cannot supersede the Juvenile Court's July 9, 2010 order, even if warranted. As a quasi-judicial state agency of limited jurisdiction, OAH has no power to review the propriety of orders made in the Superior Court of the State of California. As discussed above, to the extent

LACOE now wants to be reimbursed from another LEA, it may pursue its state administrative remedies without involving Student.

28. In sum, LACOE had a duty to provide Student a FAPE by implementing the RTC placement up to July 15, 2010, the date of Student's release to West Shield for transportation to Devereux. LACOE did so pursuant to the Juvenile Court order on July 9, 2010. This is consistent with the principle that Student is entitled to receive a FAPE even while educational agencies dispute their respective duties. (see Gov. Code, § 7585, subd. (f) & Cal. Code of Regs., tit. 2, § 60610.) Whether LACOE may be reimbursed from another LEA for any funds LACOE has already expended is outside the scope of this decision for two reasons: 1) the issue was not alleged in Student's complaint; and 2) LACOE expended funds pursuant to a Juvenile Court order that is not reviewable in this proceeding. (Factual Findings 1-22, 24, 27, Legal Conclusions 11-21.)

Analysis of LAUSD's Duty to Student

29. Education Code section 56041, subdisivion (a), unequivocally establishes that the LEA, i.e., the agency required to provide an eligible non-conserved 18-year-old special education student a FAPE, is the "last district of residence in effect prior to the pupil's attaining the age of majority [and] shall become and remain as the responsible local education agency, as long as and until the parent or parents relocate to a new district of residence." LAUSD contends that Student did not demonstrate that it was Student's LEA as of July 15, 2010 for two reasons: 1) that Education Code section 56041 is rendered inoperative by another statute that clarifies that educational rights of a parent transfer to a non-conserved minor at age 18; and 2) that Student failed to produce sufficient evidence of Mother's residency at hearing. LAUSD's contentions fail on both points and Student fully met her burden of proof.

30. First, LAUSD's statutory construction argument fails. LAUSD contends that the following language in Education Code section 56041.5 should be construed as eliminating the language of Education Code section 56041 that identifies the LEA based on the residency of a "parent":

> When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

(Ed. Code, § 56041.5.)

31. The Education Code expressly states the principle of statutory construction that "the definitions prescribed by this article apply unless the context otherwise requires."

(§ 56020; see also Cal. Code. Regs., tit. 2, § 60010, subd. (a) ("Words shall have their usual meaning unless the context or a definition of a word or phrase indicates a different meaning.").) Generally, statutory interpretation requires a determination of "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." (*Barnhart v. Sigmon Coal Co., Inc.* (2002) 534 U.S. 438, 450 [122 S.Ct. 941, 151 L.Ed. 2d 908].) No further interpretation is required if the statutory language is unambiguous and "the statutory scheme is coherent and consistent." (*Id.* at p. 450.)

32. Common principles of statutory interpretation include: 1) that "words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible"; 2) "statutes should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect"; and 3) when interpreting several statutes, they "must be read together and so construed as to give effect, when possible, to all the provisions thereof." (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54 [citations and internal quotation marks omitted].)

33. To analyze LAUSD's contention requires looking to the definitions in the Education Code. "Parent" is defined as the biological or adoptive parent, a foster parent, guardian, or other individual legally responsible for the child's welfare or for making educational decisions. (Ed. Code, § 56028, subd. (a).) The definition does not address non-conserved pupils over the age of 18. (*Ibid.*) The definition of parent does not include the state or any political subdivision of government. (Ed. Code, § 56028, subd. (c).)

34. The statutory language on its face does not support LAUSD's interpretation. Education Code section 56041 subdivision (a) unambiguously makes the LEA the last district of residence of a "parent" prior to a non-conserved student turning 18, until such time as the "parent" of the non-conserved student relocates. The definition of "parent" in Education Code section 56028 cannot be read in any way to mean non-conserved student as that term is used in Education Code section 56041. Education Code section 56041.5 on its face does not mention residency, or determination of the responsible LEA, and instead is limited to mandating that students be advised of, and are entitled to, their IDEA procedural rights upon reaching the age of 18. Nothing in Education Code section 56041 makes formal registration in a school district part of the criteria for establishing the LEA responsible to provide a FAPE. LAUSD's reliance on *Student v. Los Angeles Unified School District* (2007) OAH Case Number 2007010772 for the proposition that formal "enrollment" is required to trigger its duty to serve Student is misplaced. First, OAH Case Number 2007010772 is not factually on point, as it involved a student over the age of 18 who moved into a new school district with his parents. Moreover, the decision cites no statutory authority that would demonstrate that under the facts presented in this case, Student was required to "enroll" in LAUSD before LAUSD's duty as an LEA was triggered; and prior decisions of OAH are not binding authority. (Cal. Code of Regs., tit. 5, § 3085.) District's statutory interpretation argument fails.

35. Finally, LAUSD's argument that Student did not present sufficient evidence also fails. Student's Mother credibly testified that at all times prior to Student running away when she was a minor, LAUSD was the LEA. Mother's testimony was corroborated by Student's LAUSD IEP. Mother also credibly testified that at all times after Student ran away, Mother lived within areas served by LAUSD. Specifically, after the family moved in 2006, Mother's other minor children were enrolled in LAUSD. Presumably, LAUSD could have easily impeached Mother on this point using its enrollment records, but did not, and LAUSD fails to demonstrate any reason why Mother should not be believed. Mother also credibly established that she had parental rights during the time Student was a runaway, and the evidence showed that Student turned 18 while in custody at Juvenile Hall. Student amply proved by a preponderance of the evidence that at all relevant times prior to, and after her 18th birthday, when Student was not detained in Juvenile Hall, LAUSD was the LEA for Mother's residence.

36. Applying Education Code section 56041, subdivision (a) to the facts presented, LAUSD was the LEA responsible for providing Student a FAPE as of July 15, 2010, the date Student left Juvenile Hall subject to the Juvenile Court order to transfer placement to Devereux. LACOE was only the LEA during the temporary time Student was in Juvenile Hall. As the LEA for the period after Student's release from Juvenile Hall, LAUSD's responsibility included transportation and the non-mental health costs of the RTC placement. (Cal. Code Regs., tit. 2, §§ 60110, subd. (b)(2) & 60200, subd. (d).) Whether LAUSD must reimburse LACOE for the transportation and tuition expenses LACOE incurred to implement the RTC placement from July 9, 2010 to the time of hearing on remand, is outside the scope of this decision because: 1) the issue was not alleged in Student's complaint; and 2) LACOE expended the funds pursuant to a Juvenile Court order that is not reviewable in this proceeding. However, as of the date of this order, LAUSD is responsible to implement all non-mental health aspects of the RTC placement prospectively, until such time as there is a change in Student's placement or Mother's residency. (Factual Findings 1-12, 14-15, 18-22, 24, 27, Legal Conclusions 11-21.)

Analysis of CDE's Duty to Student

37. As discussed above, the evidence at hearing established that LACOE was the LEA for Student from the time of her detention in Juvenile Hall, through July 15, 2010, when she was released from Juvenile Hall for transportation to Devereux. The evidence also showed that by operation of Education Code section 56041, subdivision (a), LAUSD reverted to being the LEA for Student as of July 15, 2010, based on Mother's continuous residency in areas served by LAUSD prior to, and after, Student's 18th birthday. At all times, the responsibilities of LEAs such as LACOE and LAUSD to provide a FAPE to Student were clear. The evidence did not support a finding that CDE somehow failed to meet it duty of ensuring that the requirements of IDEA were met, such that CDE could be held responsible for Student not being provided a FAPE. (See *Gadsby v. Grasmick, supra*, 109 F.3d at p. 953; *Kruelle v. New Castle County Sch. Dist., supra,* 642 F.2d at p. 696.) CDE had no responsibility to provide Student a FAPE at any relevant time. (Factual Findings 1-12, 14-15, 18-20, Legal Conclusions 11-19.)

ORDER

1. LACOE was responsible for providing Student with a FAPE by implementing the February 24, 2010 IEP team recommendation to place Student in a residential treatment center up to July 15, 2010. LACOE's responsibility included coordinating efforts between agencies, signing any necessary contracts, providing any necessary funding, and providing transportation for Student.

2. LAUSD was responsible for providing Student with a FAPE beginning July 15, 2010. LAUSD is responsible for the continued provision of a FAPE to Student until circumstances change, such as a change in Mother's residence or in Student's placement, that operate to shift responsibility to another LEA. Accordingly, beginning on the date of this order, LAUSD shall prospectively conduct Student's IEP team meetings and fund all the services set forth in California Code of Regulations, title 2, section 60200, subdivision (d), to the extent contained in Student's IEP.

3. CDE was not responsible for providing Student with a FAPE at any relevant time.

4. To the extent LACOE believes it is entitled to reimbursement from LAUSD for transportation and tuition costs it incurred as a result of the decision issued in these proceedings on June 15, 2010, and subsequently ordered by the Juvenile Court on July 9, 2010, LACOE may use the procedure in Government Code section 7585 to obtain relief by operation of California Code of Regulations, title 2, section 60600, subdivisions (a) & (b).

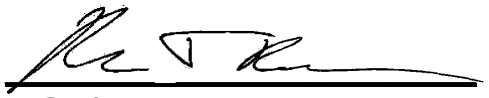
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed in the First Case as to LACOE and in the Second Case as to LAUSD.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: July 21, 2011



RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

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[i] In its April 22, 2011 remand order, the District court found that the undersigned ALJ erred in the First Case by not granting LACOE's motion to join LAUSD as a party. In particular, the District Court concluded that: 1) compulsory joinder was required; and 2) that LAUSD was a necessary party whose responsibility to provide a FAPE to Student was ripe for adjudication at the time of LACOE's motion.

As to the first basis for the District Court's order, that compulsory joinder was required, the District Court's April 22, 2011 order does not contain any citation to the IDEA or California law and regulations governing administrative hearings under the IDEA that stands for the proposition that the Code of Civil Procedure in general, or the compulsory joinder rule in Code of Civil Procedure section 389, applies to IDEA due process hearings. Instead, the sole citation used by the District Court was a "see" citation to Code of Civil Procedure section 389 and a case interpreting it. As discussed below, no express authority exists mandating the application of this provision of the Code of Civil Procedure to IDEA due process hearings in California.

Section 389, subdivision (a) of the Code of Civil Procedure defines a "necessary" party as follows:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

On its face, Code of Civil Procedure section 389 applies to a "court" hearing an "action," not an administrative proceeding before a hearing officer. Code of Civil Procedure section 22 defines an "action" as "… an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense [emphasis added]." Thus, on

its face, Code of Civil Procedure section 389 does not apply to administrative hearings before OAH.

The Advisory Committee notes to Code of Civil Procedure section 389, stress that the rule was intended to further the interest of the party bringing a lawsuit in getting all relief to which it was entitled, and the interest of the public in avoiding repeat procedures about the same subject matter. (See 1973 Main Volume Advisory Committee Notes, West's Ann. Code Civ. Proc., § 389, *People ex rel. Lundgren v. Community Redevelopment Agency* (1997) 56 Cal.App.4th 868, 875 [citing 1973 Main Volume Advisory Committee Notes]; see also *Bank of California Nat. Assn. v. Superior Court* (1940) 16 Cal.2d 516, 520-524 [recounting history of common law joinder, either as a jurisdictional principle for "indispensable" parties, or to ensure fairness and avoid multiple actions as to "necessary" parties].)

In contrast to the intent of Code of Civil Procedure section 389, the IDEA specifically exempts parents from any requirement that they file all possible issues at one time in the same due process complaint. Instead, the IDEA permits a parent to file separate due process complaints on separate issues, even if a due process complaint is already on file. (20 U.S.C. § 1415(o); Ed. Code, § 56509.) The Administrative Procedure Act requires that OAH apply the above principle by expressly stating that, "The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding." (Gov. Code, § 11415.10, subd. (a).) Thus, if IDEA permits the filing of multiple, separate due process hearing requests, it is inconsistent to require a petitioning party to file all possible issues against all possible respondents to meet the public policy rationales underlying Code of Civil Procedure section 389's compulsory joinder rule.

As a further indication that joinder of multiple possible respondent agencies is not contemplated as part of an IDEA hearing, Government Code section 7586, subdivision (d) expressly prohibits local education agencies from using IDEA due process procedures against each other, such that a school district can never be prejudiced by failure to join another school district because there is no right in an IDEA hearing to a cross-complaint between agencies. As discussed in the Legal Conclusions of this decision, California law contains procedures for separate administrative proceedings to handle the issue of inter-agency disputes about funding. (Gov. Code, § 7585; Cal. Code of Regs., tit. 2, § 60600.) Thus, it is clear that both the IDEA and the state laws implementing it, expressly reject the principle that a party must obtain all possible relief in one proceeding, and expressly reject the principle that a respondent agency can use an IDEA due process hearing to shift responsibility to another agency.

Even though IDEA contemplates multiple proceedings involving the same respondents, and even though California law prohibits agencies from using IDEA due process hearings to pursue their own claims against other agencies, the District Court's April 22, 2011 order focused on the prejudice to LACOE as a respondent who may be subjected to multiple proceedings, rather than on the student's right to bring multiple due process hearing

requests on issues identified by a student, as contemplated by the IDEA. However, the District Court did not address that the Ninth Circuit Court of Appeals recently held that the IDEA, "establishes a private right of action for disabled children and their parents. It creates no private right of action for school boards or other local educational agencies apart from contesting issues raised in the complaint filed by the parents on behalf of their child." (*Lake Washington School District No. 414 v. Office of Superintendent of Public Instruction* (9th Cir. 2011) 634 F.3d 1065, 1068 (*Lake Washington*).) In *Lake Washington*, the Ninth Circuit found that a school district had no standing to challenge the way IDEA procedural protections were applied in a state administrative hearing. In reaching its holding, the Ninth Circuit recognized that Congress intended the procedural safeguards in the IDEA to ensure that parents could enforce their children's right to a FAPE. (*Id.* at pp. 1067-1068.) Accordingly, to the extent the District Court relies on a concern for the rights of LACOE as a respondent agency, its analysis is inconsistent with the purpose of the IDEA procedural safeguards.

Further, consistent with *Lake Washington*, *supra*, granting joinder on the motion of a respondent agency is inconsistent with the IDEA's timelines and may act to disadvantage students' families, many of whom are unrepresented. The IDEA expressly requires that a responding LEA be entitled to a resolution session within 15 days of the date the due process hearing request was filed. (20 U.S.C. § 1415 (f)(1)(B); Ed. Code, § 56501.5.) The District Court order did not consider how the grant of a joinder motion by a respondent will result in an automatic delay to the hearing in order to afford any newly joined LEA the opportunity to attend a resolution session. Thus, applying civil compulsory joinder is inconsistent with the speedy resolution and alternative dispute resolution session required by IDEA. Moreover, compulsory joinder appears to be inconsistent with the informal hearing process envisioned by the IDEA, particularly when granting joinder at the request of a respondent would impose a burden of proof on the petitioning parent and student, who are frequently self-represented, and have no interest in presenting evidence to resolve funding disputes between agencies. (See *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] [establishing that the petitioning party has the burden of proof in an IDEA due process hearing].)

It appears that the only possible scenario under which state law implementing the IDEA expressly appears to allow joinder is in matters involving related services providers, such as county mental health agencies or state agencies that are related service providers identified in an IEP. Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties. Because until recently California's system mandated that mental health services that are required for a FAPE be provided by county mental health agencies, Government Code section 7586 can be read to authorize joinder in cases where the provision of related services by a state agency other than the LEA is at issue. (See Gov. Code, § 7576 & fn. 4, *ante*.) Nothing in Government Code section 7586 can be read to authorize compulsory joinder of another LEA that may serve a student in the future, or had served a

student in the past, when only the current LEA has been named by a student as the respondent.

As to the second basis for the District Court's April 22, 2011 order, that the issue of LAUSD's responsibility to provide a FAPE to Student was "ripe" for adjudication as of the filing of the First Case, the ALJ respectfully disagrees as well. First, the District Court did not address that at the time the First Case was pending, the Juvenile Court had not made a final disposition establishing probation conditions or releasing Student. Instead, other orders short of a release from Juvenile Hall were possible. (See Juvenile Court Orders filed by Student on July 13, 2011.) For example, the Juvenile Court could have issued an order to the probation department for "suitable placement," which would not mean release to the community, but instead could result in the Probation Department maintaining custody of Student and housing her in a geographic area not served by LAUSD. Similarly, Student was over 18 years of age at the time of the First Case and had a history of being a runaway. It was also possible, depending on the form of the disposition order, that Student could violate the disposition order and not attend school at all following her release.

Finally, the District Court cites to Article III, section 2, of the United States Constitution for the proposition that there was a live "case or controversy" based on LACOE's allegation that LAUSD might be responsible for providing Student's education upon Student's release from Juvenile Hall. However, while Article III, section 2, of the United States Constitution defines the original jurisdiction of federal courts, it is inapplicable in state administrative hearings where jurisdiction is limited based on the provisions of the statutory and regulatory scheme being applied. (See Gov. Code, § 11415.10, subd. (a).) Moreover, the IDEA itself does not contemplate that federal courts are the exclusive venue for review of IDEA administrative hearings, but instead contemplates that any party aggrieved by a decision "shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in *any State court of competent jurisdiction* or in a district court of the United States, without regard to the amount in controversy." (20 U.S.C. § 1415(i)(2)(A) [emphasis added].) Thus, the original jurisdiction of the federal courts as set forth in the United States Constitution cannot be a basis for determining the scope of the issues or the procedural rules that apply in state administrative hearings under the IDEA.

In sum, there is no express statutory authority for the application of compulsory joinder rules to California administrative hearings on IDEA issues, and to the contrary, both the express provisions of IDEA and the polices behind it demonstrate that Code of Civil Procedure section 389 should not be applied in such hearings. Although the ALJ has complied with the District Court's order in this proceeding, he respectfully disagrees with the District's Court's reasoning for the reasons set forth above.